*HON'BLE SRI JUSTICE L.NARASIMHA REDDY

+ **WRIT PETITION Nos.5449 of 2000 and 26455 of 2007**

% 24th February 2009

Maddulapalli Yellaiah and others

…Petitioners

And

$ The State of A.P. and others

…Respondents

! Counsel for the petitioners : Sri Vedula Venkata Ramana

^ Counsel for respondents : GP for Revenue

< Gist:

> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.5449 of 2000 and 26455 of 2007

COMMON ORDER:

These two writ petitions are filed by the same petitioners and they are disposed of through a common order.

The lands in survey Nos.23 to 30, corresponding to new survey Nos.32 to 39, admeasuring about 100 acres, situated at Kummarpally Village, Dharor Mandal, Ranga Reddy District, were held in patta, by one Mir Thurab Ali Khan. Sarvasri Maddulapalli Anthaiah and Chukkaiah, sons of Ramaiah, were recognized as protected tenants.

The petitioners are the legal heirs of the protected tenants.

Turab Ali Khan filed a declaration under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Ceiling Act') and he has shown the above said lands also in the declaration. The Land Reforms Tribunal found that the declarant holds lands, in excess of ceiling limits. The order became final and an extent of Acs.91.14 guntas of land in the said survey numbers was resumed to the Government, under Section 4(1) of the Ceiling Act. It is stated that the land resumed to the Government was assigned to several landless poor, including some of the petitioners. Part of the land was effected by the laying of double line by the South Central Railway.

W.P.No.5449 of 2000 is filed by the petitioners, claiming compensation for the land, that was utilized in the laying of railway line. The petitioners state that in recognition of their rights under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Tenancy Act'), succession certificate was given to them by the Mandal Revenue Officer on 16.03.1991, and that they are entitled to be paid compensation for the entire land, or at least, in the proportion, mentioned under the Tenancy Act.

The respondents filed a counter-affidavit, stating that though the ancestors of the petitioners were recognized as protected tenants, the land, however, was taken by the Government under the Ceiling Act, and thereby, the rights, if any, of the petitioners, have been extinguished.

The writ petition was allowed through order, dated 06.03.2003. The respondents filed W.A.No.1772 of 2003. The writ appeal was allowed on 04.04.2006 and the matter was directed to be heard again. The Division Bench of this Court made certain observations about the lack of consistency and coherence, in the context of implementation of the provisions of the Tenancy Act, *vis-à-vis* the lands in question. A doubt was expressed as to the propriety of granting succession in favour of the petitioners, even in the absence of proceedings under

Section 38-E of the Tenancy Act.

The Joint Collector-I, Ranga Reddy District, has entertained a *suo motu* revision under Section 90 of the Tenancy Act *vis-à-vis* the order dated 16.03.1991, passed by the Mandal Revenue Officer, under Section 40 of that Act. After issuing notice to the petitioners, he passed an order, dated 16.03.2007, cancelling the order dated 16.03.1991, whereunder succession was granted to the petitioners. W.P.No.26455 of 2007 is filed against it.

Sri Vedula Venkata Ramana, learned counsel for the petitioners, submits that once the ancestors of the petitioners were recognized as protected tenants, their rights get crystallized and various proceedings under the Ceiling Act, in respect of such lands, are untenable in law and without any consequence. He contends that the Ceiling Act itself carves out exception, in respect of the lands that are covered by the Tenancy Act. Learned counsel submits that there was absolutely no basis for the Joint Collector to set aside the order, dated 16.03.1991, since nobody disputed the relationship of the petitioners, with the protected tenants.

Learned Government Pleader for Revenue, on the other hand, submits that the possession of the land was resumed to the Government, on the strength of statutory proceedings and the petitioners did not raise objection at any point of time, though part of that very land was assigned to them. He contends that one of the conditions precedent, for grant of succession under Section 40 of the Tenancy Act, is that the claimant must be in possession of the land, and once the land was resumed to the Government, there was absolutely no basis for granting succession to the petitioners. He further contends that the only forum before which the claim for compensation can be made is, the one under the Land Acquisition Act and the petitioners cannot canvass their rights through these writ petitions.

It is a matter of record that the lands, referred to above, were held

by the ancestors of the petitioners, who were recognized as protected tenants. Either not being aware of this, or wantonly, the pattadar i.e. Thurab Ali Khan, has shown all these lands in his declaration under the Ceiling Act. He was held to be having lands in excess of ceiling limits. Surrender proceedings have ensued, and almost the entire land,

as regards which, protected tenancy existed was resumed to the Government. The record does not disclose that the petitioners were in possession of the land, at the relevant point of time.

Be that as it may, not only did the Government resume the land, but also had assigned part of it, to various individuals, including some of the petitioners, and another part of it was utilized in laying the railway line.

Two aspects arise for consideration, in these writ petitions viz.,

(a) whether the succession certificate issued in favour of the petitioners is tenable in law; and

(b) whether the petitioners are entitled to be paid compensation over the land utilized by the railways.

The petitioners approached the Mandal Revenue Officer with an application under Section 40 of the Tenancy Act. The proceedings were not adversarial in nature, and on being satisfied that the ancestors of the petitioners were recognized as protected tenants in respect of the lands, the Mandal Revenue Officer, issued certificate through proceedings, dated 16.03.1991. It does not appear, that the ground situation has been taken into account. The Government took possession of these lands, in pursuance of the proceedings under the Ceiling Act. The legality or otherwise thereof apart, simple grant of succession certificate by itself did not cloth the petitioners, to resume or claim possession straightaway. Neither any patent illegality, nor any fraud was alleged. Mere recognition of an individual, as successor of a protected tenant, does not bring about any tangible

result, *vis-à-vis* the land. The legal rights that accrue out of it, have to be worked out independently. Therefore, even while holding that the order passed by the Joint Collector on 16.03.2007 is untenable in law, it needs to be clarified, that the petitioners would succeed only to the rights, which their predecessors held over the lands, by the time the succession came to be granted.

Coming to the second question, the petitioners are not clear as to whether any notification under Section 4(1) of the Land Acquisition Act, 1894 and declaration under Section 6 were issued for the entire land.

A notification under Section 4(1) of the Act, covering an extent of about two acres, is placed. It is not known as to whether the same has been proceeded with, under the other provisions of that Act. Be that as it may, whether the protected tenants or even the persons claiming rights and interest in any other manner, over the acquired land, have to work out their remedies only in the course of award enquiry. If proceedings under the Act are not initiated or pending, the affected party has to file a suit for declaration of title and the consequential remedy of payment of compensation. Therefore, no relief, in the form of a direction for payment of compensation to the petitioners, can be granted and it is left open to the petitioners to work out their remedies in accordance with law.

Hence, W.P.No.5449 of 2000 is disposed of, leaving it open to the petitioners to work out their remedies in the award enquiry, if any proceedings under the Land Acquisition Act were initiated, or pending; or to file a suit in the absence of such proceedings.

W.P.No.26455 of 2007 is partly allowed by setting aside the impugned order, dated 16.03.2007, but directing that the succession granted to the petitioners by the Tahsildar, through proceedings dated 16.03.1991, shall be limited to the nature of rights, that were held by their ancestors as on he date of grant of such succession, *vis-à-vis* the lands.

There shall be no order as to costs.

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L.NARASIMHA REDDY,J.

Dated:24.02.2009
Note:Mark L.R. copy.
GJ